Supreme Court, U.S.
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In the Supreme Court
OF THE
United States

October Term, 1993

JAMES H. STANTON, WINNIFRED STANTON,
and their marital community,
and ALBANY INSURANCE COMPANY, et al.,

Petitioners,

vs.

BAYLINER MARINE CORPORATION,

Respondents.

**On Writ of Certiorari to
the Supreme Court of the
State of Washington**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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FILED ON
OCT 9 1990

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

JAMES H. STANTON and WINNIFRED STANTON; et al.,

Plaintiffs,

v.

BAYLINER MARINE CORPORATION, a Delaware corporation, et al.,

Defendants.

ALBANY INSURANCE COMPANY, a foreign corporation,

Plaintiff,

v.

BAYLINER MARINE CORPORATION, a Delaware corporation, et al.,

Defendants.

NO. 88-2-21368-2

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS

THIS MATTER having come on upon cross-motions for summary judgment by defendant Bayliner Marine Corporation and by plaintiffs. The Court was furnished with and considered the following supporting and opposing materials: From defendant Bayliner (1) Motion for Summary Judgment including authorities, (2) Declaration of Newell D. Smith with attachments, (3) Declaration of Ted Brewer, (4) Declaration of Dexter A. Washburn including attachments, and (5) Reply Brief; From plaintiffs (1) Cross Motion for Partial Summary Judgment and Memorandum, (2) Declaration of E. A. "Ted" Drake, (3) Declaration of Paul N. Daigle, and (4) Reply of Plaintiffs.

The claims of plaintiffs in these consolidated cases arise from separate casualties Involving two 45 foot Bayliner model 4550 motor yachts, the MOONRAKER and the CONTESSA.

The opposing motion papers identify two factual issues: (1) whether the subject events can be characterized as "sudden and calamitous" as those terms are defined and applied in Pennsylvania Glass & Sand Corp. v. Caterpillar Tractor Co., 652

F.2d 1165 (3d Cir. 1981) and (2) whether the configuration of the skeg keel is unreasonably dangerous under circumstances of ordinary use (see counter declarations of Drake and Brewer). However, neither of these issues is material to the order for partial summary judgment that follows and both are mooted by it. The remaining issues presented by these cross-motions for summary judgment are based upon facts that are undisputed and may be resolved as a matter of law.

The paramount question upon which all others will turn is whether or not the two casualties are within admiralty jurisdiction. The appropriate test is described in Foremost Ins. Co. v. Richardson, 457 U.S. 668, 73 L. Ed. 2d 300, 102 S.Ct. 2654 (1982). The test involves two considerations: (1) locality and (2) the events must have a significant relationship to traditional maritime activity. According to Sisson v. Ruby, 497 U.S. ___, 111 L. Ed. 2d 292, 110 Sup. Ct. 2892 (1990), the latter inquiry is applied in a "general sense" and not with reference to the specific facts of the case.

In the two casualties at bar both phases of the test are clearly met. In each case the locality was upon navigable waters and in each case errors in navigation resulted in accidents groundings. Such circumstances taken in a general sense, have an unmistakable and substantial relationship to traditional maritime activities of the kind described by the United States Supreme Court as dispositive. Moreover, the specific facts of both of these casualties likewise satisfy the test.

The import of admiralty jurisdiction for these state court actions is that this Court must apply admiralty law.

There is no cause of action under admiralty law for products liability claims for economic loss. East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 106 Sup. Ct. 2295, 90 L. Ed. 2d 865 (1986); WWP v. Graybar Electric Co., 112 Wn.2d 847, 862 (1989).

The plaintiffs' claims here are for the value of the two vessels, net of salvage; in other words, their "economic loss." In addition, the Stantons claim for loss of various items of personalty

having an alleged combined value of approximately $25,000.00. The Stantons argue that this loss will take all of their claims out of the rule enunciated in East River. The argument is rejected on two grounds: first, much of what has been enumerated by the Stantons appears to be normal furniture and furnishings of an operating pleasure boat and thus includable in the "economic loss" of the vessel itself; second, claims for personal property are distinguishable from the damages for loss of the vessel, Icelandic Coast Guard v. United Technologies, 722 F. Supp. 942 (D. Conn. 1989), which, although not controlling is persuasive on the point.

Based on the holding in East River the Court concludes that plaintiffs do not have a products liability or negligence claim for any economic loss attributable to the loss of the vessels or the vessels' furniture, equipment or furnishings. Accordingly, plaintiffs' complaints against both defendants based on product liability or negligence theories must be dismissed with prejudice.

To the extent the plaintiffs assert claims against the defendant Bayliner based on a breach of warranty theory, those

claims are likewise dismissed with prejudiced on the authority of Baughn v. Honda Motor Co., 107 Wn.2d 127, 727 P.2d 655 (1986).

Warranty claims against defendant Olympic Boat Center, Inc. are unaffected by this ruling.

To the extent the Stantons have claims for losses to personalty which was not equipment or furnishings of the MOONRAKER, those claims are preserved for the trial of this cause.

Finally, the court recognizes that a speedy review of this order and the judgment entered in conformity herewith may be essential to the efficient administration of justice and the protection of the interests of all of the parties In this case and accordingly, expressly finds there is no just reason for delay in the entry of a final partial summary judgment in conformity with this order together with the appropriate direction to the Clerk.

DONE IN OPEN COURT this 9th day of October, 1990.

/s/ RICHARDO S. MARTINEZ
JUDGE

FILED
AUG 17 1992

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JAMES H. STANTON and WINNIFRED STANTON, and their marital community; and STANTON INVESTMENT COMPANY, INC., a Washington corporation,	NO. 27275-6-I
	DIVISION ONE
Appellants,	
v.	
BAYLINER MARINE CORPORATION, a Delaware corporation; and OLYMPIC SALES, INC., d/b/a OLYMPIC BOAT CENTERS, a Washington corporation,	
Respondents.	FILED: AUG 17 1992
ALBANY INSURANCE COMPANY, a Washington corporation,	
Appellant,	

v.

BAYLINER MARINE CORPORATION, a Delaware corporation; and OLYMPIC SALES, INC., d/b/a OLYMPIC BOAT CENTERS, a Washington corporation,

Respondents.

GROSSE, C.J. -- This is an appeal from an order granting partial summary judgment in favor of defendants, Bayliner Marine Corporation (Bayliner) and Olympic Sales, Inc., d/b/a Olympic Boat Centers (Olympic Boat). The claims of plaintiffs in these consolidated cases arise from separate casualties involving two 45-foot Bayliner model 4550 motor yachts, the MOONRAKER and CONTESSA. The MOONRAKER was owned by James H. Stanton, Winnifred Stanton, and Stanton Investment Company. The CONTESSA was owned by Wiley Dean Henry and Barbara Merlino Henry. Both yachts were insured by Albany Insurance Company (Albany).

The Stantons and the Henrys both bought Bayliner motor yachts from a sales office of the Olympic Boat Centers in Seattle, Washington. The vessels were manufactured by Bayliner, were constructed nearly identically, and were designed for recreational use. While the Stantons and the Henrys were pleasure boating, their yachts struck underwater objects: the Stantons' yacht struck a submerged rock in Puget Sound, Washington; the Henrys' yacht grounded on a reef off the coast of Vancouver Island, Canada. As a result of the collisions both boats suffered severe hull damage which caused mass flooding. Specifically, the keel of the vessels, a longitudinal extension of the hull that protrudes most deeply, penetrated on impact allowing seawater to sink the vessels rapidly.[1] The passengers on the Stanton yacht were rescued by nearby boaters; those aboard the Henry yacht were rescued by a Canadian maritime helicopter.

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[1]Bayliner asserts that the Stantons' boat sank in 27 minutes. The Stantons maintain it sunk in 12. The Henrys' boat did not sink as it remained lodged on the rocks upon which it had grounded.

The Stantons and Albany, under its subrogated interest, brought similar suits against Bayliner and Olympic Boat primarily seeking to recover the cost of replacing and repairing the yachts. They presented a declaration of a naval architect and marine engineer who stated that the design of the keel was defective and resulted in the losses for which Stanton and Albany were seeking recovery. The naval architect also stated that certain design techniques could have prevented the mass flooding.

Bayliner sought summary judgment dismissal of the bulk of Stanton's and Albany's claims on the ground that the suits predominantly sought recovery for economic losses (replacing and repairing the vessels) which are not recoverable under maritime law. The trial court granted the motion, dismissing substantially all of Stanton's and Albany's claims. This appeal followed.

Albany contends that the trial court erred in applying federal maritime law, which precludes recovery for economic losses, rather than state law, to claims arising from the grounding of two pleasure boats in navigable waters. Whether the trial court erred

turns on two questions: (1) whether admiralty jurisdiction is indeed proper here; and (2) if it is, whether admiralty law compels the choice of the federal over the state definition of "economic loss" on these facts. We consider each question in turn.

Jurisdiction

Bayliner contends, and Albany concedes, that admiralty jurisdiction applies. We agree. As a general rule, application of maritime jurisdiction is appropriate when the event giving rise to the suit occurs on navigable waters, and the potential hazard to maritime commerce arises from an activity that bears a substantial relationship to traditional maritime activity. Foremost Ins. Co. v. Richardson, 457 U.S. 668, 73 L. Ed. 2d 300, 102 S. Ct. 2654 (1982). The second part of the test is determined by asking whether in a general sense such activity has the potential to affect maritime commerce, not whether it actually did so in the particular case at bar. Sisson v. Ruby, 497 U.S. 358, 111 L. Ed. 2d 292, 302, 110 S. Ct. 2892 (1990); Foremost Ins. Co. v. Richardson, supra.

The first part of the test is met, as the locality of the accidental groundings was upon navigable waters. The second part of the test is slightly more difficult to apply because the relevant case law provides no principled line of demarcation between circumstances that are deemed to carry the potential to disrupt maritime commerce, and thus lie within maritime jurisdiction, and those which do not.

The jurisdictional test is fact specific; not every accident that occurs on navigable waters and has the potential to disrupt maritime commerce will render the application of admiralty jurisdiction appropriate. In Executive Jet Aviation, Inc. v. Cleveland, 409 U.S. 249, 34 L. Ed. 2d 454, 93 S. Ct. 493 (1972), for example, the Supreme Court held that the sinking of an aircraft in navigable waters did not support a claim in admiralty, despite the fact that, strictly viewed, the sinking of the aircraft created a potential to disrupt surrounding navigable commerce. In that case, the Court considered that the facts were insufficiently

related to traditional maritime activity to support admiralty jurisdiction.

When the potential hazard to maritime commerce arises from an activity that bears a substantial relationship to traditional maritime activity, however, the application of admiralty jurisdiction is proper even though the suit involves noncommercial vessels. In Foremost, the Supreme Court considered whether an accident between two pleasure boats on navigable waters fell within the purview of admiralty jurisdiction. The Court reasoned that the potential impact on maritime commerce when two vessels collide, the need for uniform rules governing navigation, and the uncertainty likely to bet occasioned by at jurisdictional test tied to the commercial use of a given boat, rendered the application of admiralty jurisdiction appropriate. Similarly in Sisson v. Ruby, the Court held that admiralty jurisdiction existed over a case involving a noncommercial vessel. In that case, a fire erupted in the washer/dryer area of a pleasure yacht while it was docked at Lake Michigan marina, destroying the yacht, and damaging the marina

and neighboring vessels. The Court considered that the requirement of a potential hazard to maritime activity was met because the fire could have spread to nearby commercial vessels, or rendered the marina inaccessible to them. The Court also deemed that the storage and maintenance of vessels is sufficiently related to maritime activity to support admiralty jurisdiction.

The facts of this case bear a closer resemblance to those of Foremost and Sisson, in which the court held admiralty jurisdiction to be proper, than they do to Executive Jet. Insofar as the case involves the grounding of vessels in navigable waters, the requirements that the activity bear a sufficient relationship to maritime activity, and that the events at issue pose a potential hazard to such activity, are met. The case is therefore governed by maritime law. That jurisdictional determination does not by itself however dictate whether federal or state law should govern the definition of "economic loss". It is to that choice of law question which we now turn.

Choice of Law

Although Albany concedes that federal admiralty jurisdiction applies, it maintains that state law should displace federal law because the state has a significant interest in the issues at stake in this case, and because the application of state law would not unduly disturb the uniformity of federal maritime law.[2] It cites Kossick v. United Fruit Co., 365 U.S. 731, 738, 6 L. Ed. 2d 56, 81 S. Ct. 886 (1961) for this proposition. More specifically, Albany maintains that the Washington product liability act (WPLA) applies and that it would provide recovery for the economic losses sustained here. The disposition of this case turns on the definition of "economic loss" in a maritime context. Under federal maritime law, if a product injures only itself, the damages are categorized as "purely economic". Such losses cannot sound in tort; plaintiffs must resort instead to contract law:

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[2]Albany also maintains that it should recover under a Uniform Commercial Code warranty theory. The incomplete state of the record, however, does not permit us to pass on that assertion.

> Even when the harm to the product itself occurs through an abrupt, accident-like event, the resulting loss due to repair costs, decreased value, and lost profits is essentially the failure of the purchaser to receive the benefit of its bargain--traditionally the core concern of contract law.

East River S.S. Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 870, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986).

The Washington Supreme Court considered and rejected this construction of "economic loss" in Washington Water Power Co. v. Graybar Elec. Co., 112 Wn.2d 847, 864-66, 774 P.2d 1199, 779 P.2d 697 (1989). There, the court held that for the purpose of the prohibition of RCW 7.72.010(6) against recovering economic losses in a product liability action, whether economic losses are recoverable is determined by applying a "risk of harm" analysis rather than by assessing damages actually sustained. Graybar, 112

Wn.2d at 865.[3] The court's approach, although stopping short of identifying which of several versions of risk of harm analysis it prefers (see Graybar, 112 Wn.2d at 866-67), requires us to evaluate such factors as the nature of the product defect, the type of risk posed by that defect, and the manner in which the injury occurred. Graybar, 112 Wn.2d at 866-67. See also Touchet Valley Grain Growers, Inc. v. Opp & Seibold Constr., Inc., 119 Wn.2d 334, 352-55, 831 P.2d 724 (1992).

Traditionally, admiralty suits are governed by federal law. See generally, Southern Pac. Co. v. Jensen, 244 U.S. 205, 216, 61 L. Ed. 1086, 37 S. Ct. 524 (1917). The U.S. Supreme Court has recognized however that even where admiralty jurisdiction lies,

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[3]In Touchet Valley Grain Growers, Inc. v. Opp & Seibold Constr., Inc., 119 Wn.2d 334, 351, 831 Wn.2d 724 (1992), the court further refined this concept by explaining that although pure economic loss is recoverable only under the Uniform Commercial Code, the nature of the loss sustained is determined by a risk of harm analysis. The court however again declined to decide which approach to characterizing economic harm should apply. See Touchet, 119 Wn.2d at 352. As was true in that case, regardless of the definition of risk of harm applied, summary judgment is inappropriate on the facts alleged here, namely a product defect creating the risk of rapid sinking upon impact.

state law may nevertheless displace federal law when a matter of local concern is at stake and the application of state law would not unduly disturb the uniformity of the maritime legal system. See Kossick v. United Fruit Co., 365 U.S. at 738 (citing Western Fuel Co. v Garcia, 257 U.S. 233, 242, 66 L. Ed. 210, 42 S. Ct. 89 (1921) and Southern Pac. Co. v. Jensen, supra. See also Pacific Merchant Shipping Ass'n v. Aubry, 918 F.2d 1409, 1422 (9th Cir. 1990), cert. denied, 60 U.S.L.W. 3162 (U.S. June 8, 1992) (No. 91-349).

The U.S. Supreme Court has explicitly rejected the notion that "wherever a maritime interest is involved, no matter how slight or marginal, it must displace a local interest, no matter how pressing and significant." Kossick, 365 U.S. at 739. The Court explained:

> [T]he process is surely rather one of accommodation, entirely familiar in many areas of overlapping state and federal concern, or a process somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent interests in a transaction

> as to which both have some concern. Surely the claim of federal supremacy is adequately served by the availability of a federal forum in the first instance and of review in this Court to provide assurance that the federal interest is correctly assessed and accorded due weight.

Kossick, 365 U.S. at 739 (citing with approval the application of state wrongful death statutes, The Tungus v. Skovgaard, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503 (1959), The Hamilton, 207 U.S. 398, 52 L. Ed. 264, 28 S. Ct. 133 (1907), and state survival of actions statutes, Just v. Chambers, 312 U.S. 383, 312 U.S. 668, 85 L. Ed. 903, 61 S. Ct. 687 (1941) although the wrongs alleged were committed within admiralty jurisdiction and were defined by admiralty law).

In deciding whether to apply federal admiralty or state law to the definition of "economic loss" we engage in interest analysis, a process in which we weigh the respective state and federal interests implicated in the suit and apply the body of law in which

most of those interests reside. See Kossick, 365 U.S. at 738-42. When the state interests in a matter outweigh federal maritime interests, a court is said to apply "maritime and local" laws. See Kossick, 365 U.S. at 738.

Interest analysis leads us to conclude that Washington's definition of "economic loss" should apply. Whatever federal interest in uniformity exists, it is outweighed by Washington's concern to ensure the personal safety of its citizens, to deter the manufacture and dissemination of dangerous products, and to exercise its authority over tortfeasors acting within its jurisdiction. The WPLA, whose very application is at issue in this case, itself attests to those interests. See generally, RCW 7.72. The Washington Supreme Court gave expression to those concerns when it rejected the East River approach to defining "economic loss":

> The Court's Analysis in East River, we believe, unjustifiably dismisses the safety concerns attendant to product injuries caused by hazardous defects. For this

reason, we find East River's approach to economic loss unsuited to what the Legislature intended under the WPLA. . . .

In contrast to the East River approach, risk of harm analysis appropriately accommodates the safety and risk-spreading policies that underlie the law of product liability, and "provides a workable and accurate distinction between accidents that should be actionable in tort and losses that should remain in the domain of warranty law." Comment, Asbestos in Schools and the Economic Loss Doctrine, 54 U. Chi. L. Rev. 277, 300 (1987). Under this analysis, the fact that a hazardous product defect has injured only the product itself, and not persons or other property, is properly regarded as a "pure fortuity". Consumers Power Co. v Curtiss-Wright Corp., 780 F. 2d 1093, 1099 (3d cir. 1986). Thus, the, same remedy is made available for this sort of injury as would be available if the product defect had injured something or someone else.

Graybar, 112 Wn.2d at 864-66.

In view of Graybar's explicit and unequivocal rejection of the East River approach, and the amply articulated rationale underlying that rejection, see Graybar, 112 Wn.2d at 863-66, we are constrained to conclude that Washington has a significant interest in a divergent interpretation of "economic loss". Because a significant state interest is at stake, and because its application would not unduly disrupt the uniformity of federal admiralty law, federal admiralty law permits us to apply state law. We therefore apply the Graybar definition of "economic loss" to Stanton's and Albany's claims. Because Stanton and Albany produced evidence to support the contention that their economic losses resulted from a product defect that posed a risk of harm, the trial court erred in dismissing their claims, which may properly be heard under the WPLA.

Not argued by the parties but equally dispositive is the following reasoning: Under admiralty law, "economic loss" claims must sound in contract or not at all. See East River, 476 U.S. at

870. The substantive contract law which applies to the claims asserted here is Washington's. Washington's product liability act (RCW 7.72) creates a single cause of action for product-related harms that preempts previously existing common law product liability remedies See RCW 7.72.010(4) and Graybar, 112 Wn.2d at 853-54. Under the product liability statute, "economic loss" is determined by a risk of harm analysis. See Graybar, 112 Wn.2d at 860, citing Stuart v. Coldwell Banker Comm'l Group, Inc., 109 Wn.2d 406, 417-22, 745 P.2d 1284 (1987). Thus, even applying admiralty law to the claims herein would require reversal.

The judgment of the trial court is reversed and the case remanded.

ALEXANDER, C.J. and PETRICH, J. concur with MORGAN, J.

DATED
DEC 30 1993

THE SUPREME COURT OF WASHINGTON

JAMES H. STANTON, ET AL., Respondents,	)	
v.	)	No. 60031-7
BAYLINER MARINE CORPORATION, Petitioner.	)	EN BANC
ALBANY INSURANCE COMPANY, Respondent,	)	
v.	)	
BAYLINER MARINE CORPORATION, Petitioner.	)	

Guy, J. - In consolidated actions against Bayliner Marine Corporation and Olympic Sales, Inc. (hereafter collectively Bayliner), plaintiffs seek recovery of the cost of replacing or repairing damaged yachts. Bayliner seeks review of a Court of Appeals decision reversing the trial court's order of partial summary judgment in its favor. We reverse the Court of Appeals.

BACKGROUND

In December 1985, plaintiffs James Stanton, Winnifred Stanton, and Stanton Investment Company purchased the *Moonraker,* a 45-foot model 4550 Bayliner motor yacht, from Olympic Sales, Inc., doing business as Olympic Boat Centers, in Seattle, Washington, for $225,342. In April 1988, plaintiff Wiley Dean Henry purchased the *M/V Contessa,* also a Bayliner model 4550 motor yacht, from Olympic Sales, Inc., for $251,548.70. Albany Insurance Company insured both yachts.

On separate occasions, while the Stantons and Henry were pleasure boating, their yachts struck underwater objects. The *Moonraker* struck a submerged rock in Puget Sound in 1987, while

the *Contessa* struck a reef off of Vancouver Island, Canada, in 1988. Both yachts sustained severe hull damage which caused mass flooding. The Stantons' boat rapidly sank, but the Stantons were rescued by nearby boaters. Henry's boat remained lodged on the rocks; Henry and his passengers were rescued by a Canadian maritime helicopter. No one suffered personal injury in either incident. Each boat was determined to be a constructive total loss. Salvage values for each boat ranged between $42,000 and $46,000.

The Stantons and Albany, under its subrogated interest from Henry, brought suits against Bayliner and Olympic Sales for products liability, negligence, breach of warranty, and violation of the Consumer Protection Act. The plaintiffs primarily seek to recover their "economic losses", or the cost of replacing and repairing the yachts. In addition, the Stantons claim loss of various items of personal property having an alleged combined value of approximately $25,000. The plaintiffs submitted the declaration of Mr. Ted Drake, a naval architect/marine engineer, who stated that the keel design of the Bayliner model 4550 was

defective and created an unreasonable risk of mass flooding should penetration occur due to accidental grounding or stranding. Mr. Drake also stated that certain design techniques could have prevented the mass flooding.

Citing *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986), Bayliner moved for summary judgment, claiming that admiralty law applies and precludes recovery for economic losses under either tort theory of products liability or negligence. Bayliner also argued that plaintiffs' warranty claim, governed by state law, did not allow recovery against Bayliner under a breach of warranty theory since the plaintiffs and Bayliner did not have privity of contract. Plaintiffs cross-moved for partial summary judgment, claiming that the Washington products liability act governed the facts of this case thereby permitting the recovery sought. The trial court granted Bayliner's motion, dismissing substantially all of plaintiffs'

claims,[1] and entered an order of finality. The plaintiffs appealed, claiming that the Washington products liability act (WPLA) applies and provides a remedy for the economic losses sustained in this case. *See Washington Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) (economic loss within context of WPLA determined by "risk of harm" analysis).

The Court of Appeals reversed and remanded, holding that while admiralty jurisdiction applied, substantive admiralty law permits the application of state tort law to determine whether economic loss is compensable. *Stanton v. Bayliner Marine Corp.*, 68 Wn. App. 125, 130-33, 844 P.2d 1019 (1992). In view of Graybar's explicit and unequivocal rejection of *East River's* approach to "economic loss", the Court of Appeals concluded that Washington has a significant interest in a divergent interpretation

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[1]The trial court left intact plaintiffs' warranty claims against defendant Olympic Sales, and the Stantons' claim for losses to personalty which was not equipment or furnishings of the *Moonraker*.

of economic loss, and that the plaintiffs' claims may properly be heard under the WPLA. *Bayliner,* 68 Wn. App. at 133.

We granted Bayliner's petition for review. We reverse the Court of Appeals.

ISSUE

The sole issue before us is whether the plaintiffs may recover damages for economic loss under Washington law in a tort claim arising under admiralty jurisdiction but filed in state court. Because the plaintiffs' claims arise under admiralty jurisdiction, we hold that substantive admiralty law precludes application of a state law remedy for the economic loss of the yachts; plaintiffs' claim for damages may properly be pursued in warranty against the seller under the Uniform Commercial Code (RCW 62A).

ANALYSIS

I

Background

These consolidated cases were brought by the plaintiffs to recover for the loss of two Bayliner boats and personal property

on board at the time of the boats' grounding. The plaintiffs primarily seek to recover damages for "economic loss" - the cost of replacing and repairing the yachts. To better understand the economic loss rule in the context of this case, we first must discuss relevant portions of the WPLA, the Supreme Court's decision in *East River,* and this court's decision in *Graybar.*

Under the WPLA,[2] a purchaser of a defective product may assert a product liability claim against a "product seller", which includes a manufacturer, wholesaler, distributor, or retailer of the product. RCW 7.72-010(1). A "product liability claim" includes, in relevant part, any claim or action brought for harm caused by the manufacture, construction, fabrication, production, design or marketing of the relevant product. RCW 7.72.010(4). The WPLA broadly defines "harm" as "any damages recognized by the courts of this state: PROVIDED, That the term 'harm' does not include direct or consequential economic loss under Title 62A RCW [UCC]." RCW 7.72.010(6). The WPLA therefore provides no

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[2]RCW 7.72.010-.060.

recovery for direct or consequential economic loss. *See Washington Water Power Co. v. Graybar Elec. Co., supra. See also Comment, Determining Recoverable Economic Harm Under the Washington Product Liability Act,* 27 Gonz. L. Rev. 335, 337 (1991-1992). The WPLA does not prevent the recovery of direct or consequential economic loss under RCW Title 62A (UCC). RCW 7.72.020(2).

In *East River S.S. Corp.,* the Supreme Court held that no products liability claim lies in admiralty when the only injury claimed is economic loss. *East River,* 476 U.S. at 871, 876. In *East River,* a group of ship charterers sued a shipbuilder who had contracted to design, manufacture, and install turbines which would be the main propulsion unit for four 225,000-ton, $125 million, supertankers. *East River,* 476 U.S. at 859. When the ships were put into service, the turbines on all four malfunctioned because of design and manufacturing defects. However, only the products themselves were damaged. The charterer sued in federal court, alleging tortious conduct based on the products liability doc-

trine, and asked for damages for the cost of repairing the ships and for income lost while they were out of service. *East River,* 476 U.S. at 861. The harm was pure economic loss, without physical injury to either a person or other property.

In *East River,* the Supreme Court incorporated products liability, including strict liability, into the general maritime law. *East River,* 476 U.S. at 865. The Court also resolved the issue of whether a plaintiff in a maritime products liability action could recover damages for economic loss. Exercising its discretion in admiralty, a unanimous Court held that a "manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." *East River,* 476 U.S. at 871. Therefore, when a product damages only itself, and not persons or other property, the proper remedy lies in contract, not in tort, no matter how the product injury occurred. *East River,* 476 U.S. at 871-72.

In *Washington Water Power Co. v. Graybar Elec. Co., supra,* a nonadmiralty case, this court found *East River's* approach to

"economic loss" unsuited to what the Legislature intended under the WPLA. *Graybar,* 112 Wn.2d at 864. In Graybar, Washington Water Power (WWP) sued the manufacturer and distributor of electric deadend insulators in federal district court to recover damages incident to the failure of thousands of insulators. WWP's complaint alleged, among other things, violation of the WPLA, as well as negligence and strict liability under the common law. *Graybar,* 112 Wn.2d at 849. While WWP claimed that the defective insulators had caused some bodily injury and property damage, the bulk of WWP's claim involved the cost of replacing the insulators. *Graybar,* 112 Wn.2d at 849.

The defendants moved for partial summary judgment on WWP's tort claims, arguing that the costs of WWP's insulator replacement program constituted economic loss recoverable only under the UCC since the WPLA excludes economic loss from its remedial scheme and preempts common law tort remedies. *Graybar,* 112 Wn.2d at 850. The Federal District Court certified to this court the issues of the nature of WWP's loss, whether the

WPLA applied, and if so, whether economic loss was recoverable under the act. *Graybar,* 112 Wn.2d at 847-48. The *Graybar* court responded that the WPLA creates a single cause of action for product-related harms that preempts common law remedies and that the WPLA does not afford a remedy for economic loss. *Graybar,* 112 Wn.2d at 860. The court, however, declined to follow *East River's* economic loss rule. *Graybar,* 112 Wn.2d at 864-66. The court held instead that whether economic losses are recoverable within the context of the WPLA is determined by applying a "risk of harm" analysis, rather than by assessing damages actually sustained. *Graybar, 112* Wn.2d at 865-67. By adopting the "risk of harm approach, Washington joined those intermediate jurisdictions that apply "risk of harm" analysis to determine whether a defect "is so hazardous that a plaintiff 's tort claim is justified even when the product has yet to injure persons or property." *See* Comment, 27 Gonz. L. Rev. at 339.

The court reasoned that "risk of harm" analysis is used to determine whether the safety-insurance policy of tort law or the

expectation-bargain protection policy of warranty law is most applicable to the claim in question. *Graybar, 112* Wn.2d at 860-61. The court stated:

> In contrast to the *East River* approach, risk of harm analysis appropriately accommodates the safety and risk-spreading policies that underlie the law of product liability, and "provides a workable and accurate distinction between accidents that should be actionable in tort and losses that should remain in the domain of warranty law."

Graybar, 112 Wn.2d at 865 (quoting Comment, *Asbestos in Schools and the Economic Loss Doctrine,* 54 U. Chi. L. Rev. 277, 300 (1987)). The court noted that under this approach,[3] "the fact

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[3]The court in Washington Water Power Co. v. Graybar Elec. Co., 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) left for another day the determination of how the risk of harm analysis would be applied. The court did discuss two approaches: the "sudden and dangerous test" approach, and the "evaluative" approach. Under the "sudden and dangerous" approach to risk of harm analysis, economic loss is distinguished from other damages according to the manner in which the product failure has occurred. If the failure is the result of a sudden and dangerous event, it is remediable under tort principles. If no such event has occurred, the product failure is deemed economic loss. The evaluative approach, on the other hand, proceeds on the theory that a product user should not have to suffer a calamitous event before earning

that a hazardous product defect has injured only the product itself, and not persons or other property, is properly regarded as a 'pure fortuity". *Graybar,* 112 Wn.2d at 865-66. In *Touchet Vly. Grain Growers, Inc. v. Opp & Seibold Gen. Constr, Inc.*, 119 Wn.2d 334, 351, 831 P.2d 724 (1992), we reaffirmed Graybar's holding that use of risk of harm analysis is appropriate for determining the nature of damages.

Court of Appeals Decision

Concluding that the case was governed by admiralty jurisdiction, the Court of Appeals turned to the choice of law question to determine which definition of "economic loss" to apply.

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his remedy. The *Graybar* court declined to decide which of these approaches is appropriate under the scheme of the WPLA. *Graybar,* 112 Wn.2d at 866-67. One commentator suggested a third approach - based on consumer expectations. See Comment, *Determining Recoverable Economic Harm Under the Washington Product Liability Act,* 27 Gonz. L. Rev. 335, 342-44 (1991-1992) (one would not expect the resulting damage to be caused by the product's failure to perform its intended function.) The commercial expectation test asks "whether the damage caused by the product's defect goes beyond the failure of the product to do what it was supposed to do and actually poses a threat of harm. If the court finds that such a threat of harm exists, above and beyond the failure of the product to perform its intended function, then the appropriate remedy is in tort since the plaintiff is at risk due to the defendant's unsafe manufacturing practices." 27 Gonz. L. Rev. at 344.

Stanton v. Bayliner Marine Corp., 68 Wn. App. 125, 129-30, 844 P.2d 1019 (1992). The court stated that "even where admiralty jurisdiction lies, state law may nevertheless displace federal law when a matter of local concern is at stake and the application of state law would not unduly disturb the uniformity of the maritime legal system." *Bayliner,* 68 Wn. App. at 131 (citing *Kossick v. United Fruit Co.*, 365 U.S. 731, 738, 6 L. Ed. 2d 56, 81 S. Ct. 886 (1961)). The court stated that this "maritime and local" determination is made by balancing state and federal interests. *Bayliner,* 68 Wn. App. at 132.

Utilizing "interest analysis", the Court of Appeals held that Washington's definition of "economic loss" should apply to this case. *Bayliner,* 68 Wn. App. at 132. The Court of Appeals reasoned that whatever federal interest in maritime uniformity exists, it is outweighed by "Washington's concern to ensure the personal safety of its citizens, to deter the manufacture and dissemination of dangerous products, and to exercise its authority over tortfeasors acting within its jurisdiction." *Bayliner*, 68 Wn.

App. at 132 (citing generally RCW 7.72 and *Graybar,* 112 Wn.2d at 864-66). The court concluded that because a significant state interest is at stake, and because the application of Washington law would not unduly disrupt the uniformity of federal admiralty law, "federal admiralty law permits us to apply state law." *Bayliner,* 68 Wn. App. at 133.

Bayliner contends that the Court of Appeals erred in its determination that state law, and not federal admiralty law, governs the resolution of this case. Bayliner claims the rule in *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) conflicts with federal admiralty law *(East River)* instead of merely "supplementing" it. Bayliner argues that the admiralty rule in *East River S.S. Corp. v. Transamerica Delaval Inc.,* 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986) therefore precludes the plaintiffs from pursuing their claim under state law.

Stanton and Albany (hereafter collectively Stanton), on the other hand, contend that the rule in *East River* does not apply to

the consumer transactions involved in these cases. Stanton argues that even if *East River* does apply to the facts of this case, Washington law is not preempted by federal admiralty law since it does not interfere with the uniform application of admiralty law.

ANALYSIS

Review of the Court of Appeals decision requires inquiry into two questions: First, does admiralty jurisdiction apply? Second, if admiralty jurisdiction applies, does substantive admiralty law preempt application of Washington's rule on economic loss"? Although the Court of Appeals properly concluded that Washington has a significant interest in a divergent interpretation of economic loss, the court erred in holding that Washington law, as expressed in *Graybar,* displaces the admiralty rule in *East River.*

Admiralty Jurisdiction Applies

[1] Bayliner contends, and Stanton concedes, that admiralty jurisdiction applies. As the Court of Appeals stated, application of admiralty jurisdiction is appropriate when the event giving rise

to the suit occurs on navigable waters, and the potential hazard to maritime commerce arises from an activity that bears a substantial relationship to traditional maritime activity." *Bayliner,* 68 Wn. App. at 128 (citing *Foremost Ins. Co. v. Richardson,* 457 U.S. 668, 73 L. Ed. 2d 300, 102 S. Ct. 2654 (1982)).

The first part of the test is met since the accidental groundings occurred in navigable waters. The second part of the test requires a determination of whether the activity has the potential to affect maritime commerce, not whether it actually affected commerce in the specific case. *Sisson v. Ruby,* 497 U.S. 358, 366-67, 111 L. Ed. 2d 292, 110 S. Ct. 2892 (1990). The second part of the test is met since the accidental groundings in this case had the potential to affect maritime commerce. *Sisson,* at 366-67 (the operation of a pleasure vessel in navigable waters bears a relation to maritime commerce, and thus, is within admiralty jurisdiction). Admiralty jurisdiction applies, therefore, despite the fact that this suit involves noncommercial vessels. *Foremost,* 457 U.S. at 675-77 (admiralty tort jurisdiction extends

to noncommercial activity such as actions arising out of the use of pleasure craft on navigable waters). *See Wahlstrom v. Kawasaki Heavy Indus., Ltd.*, 4 F.3d 1084 (2d Cir. 1993) (a fatal accident involving a Jet Ski and a 20-foot power boat on the Thames River in Connecticut); *Ruehart v. Blandon*, 672 F. Supp. 929 (E.D. La. 1987). *See also* Wonacott, *Products Liabilities of Shipbuilders and Repairers*, 62 Tul. L. Rev. 465, 476 (1987-1988).

Inasmuch as admiralty jurisdiction applies, we next determine whether substantive admiralty law precludes the application of a state law remedy. The question is whether the Court of Appeals properly determined that Washington law *supplements*, rather than conflicts with, admiralty law, allowing plaintiffs to pursue their products liability claim under Washington law. In order to reach this issue we must first decide whether the admiralty rule in *East River* applies to the consumer transaction involved in this case.

The issue resolved in *East River* was "whether a commercial product injuring itself is the kind of harm against which public policy requires manufacturers to protect, independent of any

contractual obligation." *East River,* 476 U.S. at 866. The Court held that "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." *East River,* 476 U.S. at 871. The Court specifically reserved the issue "whether a tort cause of action can ever be stated in admiralty when the only damages sought are economic." *East River,* 476 U.S. at 871 n.6.

The parties vigorously dispute whether *East River* is limited to its commercial facts and language. Stanton contends that the language in *East River* indicates that its rule is not well established as to consumer transactions involving pleasure boats and, thus, does not preclude application of state law in this case. Bayliner, on the other hand, contends that *East River* is not limited to its commercial facts.

In support of their position, respondents cite *Sherman v. Johnson & Towers Baltimore, Inc.,* 760 F. Supp. 499 (D. Md. 1990). The Sherman court concluded that because the plaintiffs and the defendant were not in a commercial relationship, the rule

in *East River* did not preclude plaintiffs' claim as a matter of law. *Sherman,* 760 F. Supp. at 502. In Sherman, buyers of a pleasure yacht destroyed by fire brought suit against the manufacturer in contract and tort. The defendant moved to dismiss the plaintiffs' tort claims under the authority of *East River. Sherman,* 760 F. Supp. at 501. The Sherman court cited *East River's* language reserving judgment on the issue of whether a tort cause of action "can ever be stated in admiralty", *East River,* at 871 n.6, and stated:

> "Therefore, a maritime tort claim alleging purely economic loss should not be dismissed for want of subject matter jurisdiction where the requirements for admiralty jurisdiction are otherwise met if the facts of the case support a theory of recovery *not clearly barred by East River* or by other controlling authority."

(Some italics ours.) Sherman, 760 F. Supp. at 501 (quoting *Employers Ins. v. Suwannee River Spa Lines, Inc.,* 866 F.2d 752, 760 (5th Cir. 1989)). The court held that the plaintiffs' theory of recovery was not barred by *East River* because *East River* limited

its holding to commercial situations and this case involved a consumer (noncommercial) transaction. Sherman, 760 F. Supp. at 502. The court noted that other courts and commentators have drawn this same distinction. *Sherman*, 760 F. Supp. at 502 (citing *Employers Ins.*, 866 F.2d at 764 (maritime case referencing *East River as* authority for resolving commercial disputes under contract law); *Richard O'Brien Cos. v. Challenge-Cook Bros., Inc.*, 672 F. Supp. 466, 472 (D. Colo. 1987); *Consumers Power Co. v. Mississippi Vly. Structural Steel Co.*, 636 F. Supp. 1100, 1112 (E.D. Mich. 1986); Owen, *Recovery for Economic Loss Under U.S. Maritime Law: Sixty Years Under Robins Dry Dock*, 18 J. Mar. L. & Com. 157, 177 n.106 (1987) (*East River* left to speculation the question of whether its rule applies in consumer cases); Force, *Maritime Products Liability in the United States, 11* Mar. Law. 1, 7, 34 (1986)).

Bayliner disputes Stanton's reliance on Sherman, claiming that the majority of maritime cases since *East River* have not made a distinction between commercial and noncommercial vessels. We

agree. For example, *Karshan v. Mattituck Inlet Marina & Shipyard Inc.*, 785 F. Supp. 363 (E.D.N.Y 1992) declined to follow Sherman. The court held that a cause of action in tort could not be stated when the only damages alleged were to the vessel itself, regardless of whether the owner was a consumer or a commercial buyer. *Karshan*, 785 F Supp. at 366. In that case, the owner of a yacht and insurers sued the boat seller under strict products liability theory for property losses as a result of a fire on the yacht. Much like Bayliner, the defendant argued that *East River* applied to the facts of the case and entitled defendant to summary judgment. *Karshan*, 785 F Supp. at 364. The plaintiffs, like Stanton, attempted to distinguish *East River* on the grounds that they had alleged damage other than to the product itself, and that the boat was not purchased in a commercial transaction. Karshan, 785 F. Supp. at 364. The court disagreed. It found plaintiffs' claim of other property damage unsupportable and stated that the Supreme Court in *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986) did

not confine its rationale to commercial transactions.[4] *Karshan*, 785 F. Supp. at 365-66.

Karshan applied the *East River* maritime economic loss rule to a noncommercial pleasure boat, citing the Supreme Court's broad concern that tort actions and warranty actions be kept separate. The court also noted as a matter of public policy that a vessel owner can best protect himself from economic loss through insurance. *See Karshan*, 785 F. Supp. at 366. As one commentator (cited in *Karshan)* noted, the *East River* Court's expansive reasoning appears to have been directed at cutting off any movement to impose liability for economic losses, even in the consumer context. See Swanson, *The Citadel Survives a Naval*

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[4]As the court noted in a footnote: "[Many of the sources cited in *East River (S.S. Corp. v. Transamerica Delaval* Inc., 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986)] are relevant to consumer transactions. These include: Restatement (Second) of Torts §§ 395 and 402A (1965) (cited by *East River, 476* U.S. at 868 n. 3, 106 S.Ct. at 2300 n. 3); U.C.C. §§ 2-313, 2-314 and 2-315 (cited at 476 U.S. p. 872, 106 S.Ct. p. 2303); and *Santor v. A & M Karagheusian, Inc.*, 44 N.J. 52, 66-67, 207 A.2d 305, 312-13 [16 A.L.R.3d 6701 (1965) (cited at 476 U.S. p. 868 and p. 870, 106 S.Ct. p. 2301 and p. 2302)." *Karshan v. Mattituck Inlet Marina & Shipyard Inc.*, 785 F. Supp. 363, 366 n.4 (E.D.N.Y 1992).

Bombardment: A Policy Analysis of the Economic Loss Doctrine, 12 Tul. Mar. L.J. 135, 181 (1987).

In *Simone v. Genmar Indus., Inc.,* 1989 Am. Mar. Cas. 2627 (S.D.N.Y), the plaintiff sued a yacht manufacturer alleging negligence based on a manufacturing defect. The boat had developed "gelcoat blisters" on its hull. Although the court determined that admiralty jurisdiction did not apply, it noted that under either New York or maritime jurisdiction, the result would have been the same: no recovery in tort for product liability damages to the product itself. *Simone*, 4 Am. Mar. Cas. at 2629 (citing *East River,* 476 U.S. at 871).

In *Sisson v. Hatteras Yachts,* Inc., 778 F. Supp. 959 (N.D. Ill. 1991), plaintiffs sought damages for economic loss, alleging that their yacht was damaged by a defective washer/ dryer unit. The court granted the defendants' motion for summary judgment based on the rule in *East River,* holding that the plaintiffs were precluded from recovery in tort.

In *Lewinter v. Genmar Indus., Inc.*, 1993 Am. Mar. Cas. 939 (Cal. Super. Ct.), plaintiffs sued the yacht manufacturer alleging negligence and strict liability for defective lamination of yacht sections which resulted in catastrophic hull failure. The defendant moved for summary judgment, claiming that the rule in *East River* precluded recovery for economic losses arising out of damage to the product itself. The plaintiffs, like Stanton, argued that *East River* was not applicable because there was no commercial relationship between plaintiffs and defendant manufacturer. The court, citing *Sisson v. Hatteras, supra,* and *Karshan v. Mattituck Inlet Marina & Shipyard Inc., supra,* refused to limit *East River* to commercial transactions. *Lewinter,* 1993 Am. Mar. Cas. at 944-47. The court noted the Sherman decision but found the reasoning of *Sisson* and *Karshan* more persuasive:

> The Sherman Court correctly noted that many of the passages in *East River* refer to "commercial" transactions and relationships, and that the *East River* Court limited its holding to commercial situations. However, *Sisson* and

> *Karshan* correctly observe that most, if not all, of *East River's* reasoning is equally applicable to so called "consumer" transactions.

Lewinter, 1993 Am. Mar. Cas. at 946-47. *See also Swanson,* 12 Tul. Mar. L.J. at 181 *(East River's* reasoning applicable in consumer context). The *Lewinter* court emphasized that any attempt to limit *East River* to commercial, as opposed to consumer, transactions could create confusion, unfairness, and unpredictability: "A manufacturer's expectation of, and entitlement to, the protection of *East River* should not, and cannot, turn on the purpose a downstream purchaser, with which the manufacturer had no dealings, had in purchasing the vessel." *Lewinter,* 1993 Am. Mar. Cas. at 948. In addition to these maritime cases applying *East River* to consumer transactions, Bayliner cites several land-based cases which have applied *East River* to noncommercial facts.[5] For example, in *Dairyland Ins. Co. v. General Motors*

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[5]Although *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) was also a land-based case, it declined to apply *East River S.S. Corp. v. Transamerica Delaval Inc.,* 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986) because of

Corp., 549 So. 2d 44 (Ala. 1989), the Alabama Supreme Court applied *East River* to deny recovery in tort to a consumer buyer of a General Motors van which caught fire while being driven and was destroyed. In *Waggoner v. Town & Country Mobile Homes, Inc.*, 808 P.2d 649 (Okla. 1990), the court applied the holding in *East River* to deny tort recovery where consumer mobile home purchasers brought an action against the manufacturer for defective roofs. In *Danforth v. Acorn Structures, Inc.*, 608 A.2d 1194 (Del. 1992), a buyer brought a products liability action against the seller of a home building kit. The court similarly refused to create an exception to the *East River* rule for a noncommercial consumer. Danforth, at 1200.

[2] On balance, the weight of authority interprets East River's maritime products liability rule as applicable to both commercial and consumer transactions. As the Supreme Court noted in *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 675-76, 73 L. Ed. 2d 300, 102 S. Ct. 2654 (1982), the federal interest in

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its definition of "economic loss", not because of any dispute over its application to consumer transactions.

protecting maritime commerce cannot be adequately served if admiralty jurisdiction is restricted to those individuals actually engaged in commercial maritime activity. Bayliner further argues that a strict commercial/ noncommercial distinction makes no sense given the facts of this case: one of the plaintiffs, Stanton Investment Co., is a corporation and is therefore a commercial entity and that, in addition, the plaintiffs' claims have been brought by a subrogated insurance carrier which, arguably, is not a consumer.[6]

[3] Because plaintiffs suffered damage to property other than the boats, they claim that by reason thereof they are entitled to recover not only the value of the personal property, but also the value of the boats. We disagree. This argument was advanced

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[6]In response, Stanton cites *Farmers Home Mut. Ins. Co. v. Insurance Co. of North* Am., 20 Wn. App. 815, 583 P.2d 644 (1978), *review denied*, 91 Wn.2d 1014, *cert. denied*, 442 U.S. 942 (1979) as authority that a federal admiralty rule applicable to insurance clauses covering commercial ships did not apply to recreational boats. The court noted that the interpretation of marine insurance policies was left to the states because there was no well-established federal rule on point. *Farmers*, at 819. In this case, application of *East River's* maritime economic loss rule to consumer recreational boats is well established.

and rejected in *Lewinter v. Genmar Indus., Inc.*, 1993 Am. Mar. Cas. at 948-49. *See also Nicor Supply Ships Assocs. v. General Motors Corp.*, 876 F.2d 501 (5th Cir. 1989). In this case, the trial court properly preserved for trial Stantons' claims for losses to personalty which was not equipment or furniture of the *Moonraker. See Sherman v. Johnson & Towers Baltimore, Inc.*, 760 F. Supp. 499, 502-03 (D. Md. 1990) (plaintiffs may assert a claim in tort for economic damage which goes beyond the product itself).

In summary, the weight of authority persuades us that the rule in *East River* does apply to consumer transactions involving pleasure boats. We must next determine whether *East River's* maritime economic loss rule applies to the exclusion of state law.

Substantive Admiralty Law Preempts Application of a State Law Remedy

Applying "interest analysis", the Court of Appeals concluded that Washington's definition of "economic loss" should apply. *Stanton v. Bayliner Marine Corp.*, 68 Wn. App. 125, 132, 844 P.2d

1019 (1992) (citing *Kossick v. United Fruit Co.*, 365 U.S 731, 738-42, 6 L. Ed. 2d 56, 81 S.Ct. 886 (1961)). Citing *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 864, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986), Bayliner argues that "[with admiralty jurisdiction comes the application of substantive admiralty law." Bayliner contends that the application of substantive admiralty law in this case means that no products liability claim lies in admiralty when the only injury claimed is economic loss. Stanton, on the other hand, argues that state law is not preempted if it does not interfere with the uniform system of federal maritime law. Stanton claims that Washington law "supplements" the remedies available in admiralty.

Article 3, section 2 of the United States Constitution provides in part that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction". This provision, by implication, grants Congress the power to revise and supplement the maritime law, and grants federal courts power to develop the general maritime law. *Pacific Merchant Shipping Assn*

v. Aubry, 918 F.2d 1409, 1421 (9th Cir. 1990) (citing *Romero v. International Terminal Operating Co.,* 358 U.S. 354, 360-61, 3 L. Ed. 2d 368, 79 S. Ct. 468 (1959)), *cert. denied,* 119 L. Ed. 2d 578 (1992). State courts, however, have concurrent jurisdiction over maritime claims. *Offshore Logistics, Inc. v. Tallentire,* 477 U.S. 207, 222, 91 L. Ed. 2d 174, 106 S. Ct. 2485 (1986).

The process of determining the applicability of state law in cases within the admiralty jurisdiction has been described as one of accommodation, "entirely familiar in many areas of overlapping state and federal concern, or a process somewhat analogous to the normal conflict of laws situation where two sovereignties assert divergent interests in a transaction as to which both have some concern." *Kossick,* 365 U.S. at 739 (citing with approval the application of state wrongful death statutes, *The Tungus v. Skovgaard,* 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503 (1959); *The Hamilton,* 207 U.S. 398, 52 L. Ed. 264, 28 S. Ct. 133 (1907); and state survival of actions statutes, *Just v. Chambers, 312* U.S. 383, 85 L. Ed. 903, 61 S. Ct. 687 (1941)).

[4] Relying on *Kossick*, the Court of Appeals stated that even though a cause of action arises under admiralty jurisdiction, state law may "displace" federal law when a matter of local concern is at stake and the application of state law would not disturb the uniformity of maritime law. *Bayliner*, 68 Wn. App. at 131-32. Although *Kossick* endorsed the notion of balancing local concerns against federal interests in some circumstances, it does not stand for the proposition that state law may displace *conflicting* federal law. *See Kossick*, 365 U.S. at 742.

The federal statute conferring admiralty jurisdiction on federal district courts "sav[es] to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. § 1333(l). The Supreme Court has said that this statute

> leaves state courts competent to adjudicate maritime causes of action in proceedings in *personam* and means that "a state, 'having concurrent ' jurisdiction, is free to adopt such remedies, and to attach to them such incidents, as it sees fit,' so long as it does not attempt to [give in rem remedies or]

> make changes in the 'substantive maritime law.'" Stated another way, the "saving to suitors" clause allows state courts to entertain in personam maritime causes of action, but in such cases the *extent to which state law may be used to remedy maritime injuries is constrained by a so-called "reverse-Erie" doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards.*

(Citation omitted. Some italics ours.) *Offshore Logistics, Inc. v. Tallentire,* 477 U.S. at 222-23 (quoting *Madruga v. Superior Court,* 346 U.S. 556, 560-61, 98 L. Ed. 290, 74 S. Ct. 298 (1954)).

In *Bohemia, Inc. v. Home Ins. Co.,* 725 F.2d 506, 510 (9th Cir. 1984), the court, interpreting both *Kossick v. United Fruit Co., supra,* and *Wilburn Boat Co. v. Fireman's Fund Ins. Co.,* 348 U.S. 310, 99 L. Ed. 337, 75 S. Ct. 368 (1955), stated that state law will control "in the absence of a federal statute, a judicially fashioned admiralty rule, or a need for uniformity in admiralty practice." *Accord, Port Lynch, Inc. v. New England Int'l Assurety of Am.,*

Inc., 754 F. Supp. 816, 820 (WD. Wash. 1991); *Pacific Merchant Shipping Ass'n v. Aubry,* 918 F.2d 1409 (9th Cir. 1990). The *Aubry* court similarly concluded that the general rule on preemption in admiralty is that "states may supplement federal admiralty law as applied to matters of local concern, so long as state law does not *actually conflict* with federal law or *interfere* with the *uniform working* of the maritime legal system." Aubry, 918 F.2d at 1422.

Applying this standard, we next determine whether application of the rule on economic loss in *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) conflicts with federal law, or whether it would disrupt the uniform application of maritime law.

Federal Preemption, *Graybar,* and
the Economic Loss Rule

It is undisputed that the design or manufacture of a defective product may qualify as a maritime tort. In *East River,* the Supreme Court incorporated products liability, including strict liability, into the general maritime law and held that no products liability claim lies in admiralty when the only injury claimed is

economic loss. *East River,* 476 U.S. at 865, 876. *East River* stands as a "judicially fashioned admiralty rule" applicable to the facts of this case.

[5] The WPLA does not conflict with the holding in *East River.* Both the WPLA and *East River* exclude damage claims for "economic loss". RCW 7.72.010(6); *Graybar, 112* Wn.2d at 856-60. As Bayliner argues, however, it is Graybar's definition of "economic loss", which does not follow *East River's* analysis, that creates a conflict between the state and federal remedies. This conflict requires application of the federal admiralty rule of *East River. See Offshore Logistics, Inc. v. Tallentire, supra; Pacific Merchant Shipping Ass'n v. Aubry, supra.* We hold the Supreme Court's holding in *East River* precludes application of a state remedy insofar as plaintiffs seek recovery for the economic loss of the yachts.[7] *See Sisson v. Hatteras Yachts, Inc.,* 778 F. Supp. 959 (N.D. El. 1991).

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[7]We note, however, that application of the maritime admiralty rule in this case does not affect the holding in *Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) as to land-based product liability actions.

Washington's interest in this matter does not outweigh federal interests in the uniformity of maritime laws. Holding that Washington's definition of "economic loss" should apply in this case, the Court of Appeals concluded that "[w]hatever federal interest in uniformity exists, it is outweighed by Washington's concern to ensure the personal safety of its citizens, to deter the manufacturer and dissemination of dangerous products, and to exercise its authority over tortfeasors acting within its jurisdiction." *Bayliner, 68* Wn. App. at 132. Bayliner argues that the state interests articulated by the Court of Appeals do not obviate the need for uniformity in maritime products liability law. We agree.

First, the court need not engage in "interest analysis" where there is a conflict between the state and federal remedies for economic loss; such conflicts are resolved in favor of federal maritime law. *See Tallentire,* 477 U.S. at 222-23. Second, assuming arguendo that there was no conflict of laws, the determination of whether the Graybar rule disrupts federal maritime harmony depends on the balance of federal and state

interests involved. *See Aubry*, 918 F.2d at 1424 (citing *Kossick*, 365 U.S. at 741-42). Washington's interest in providing a remedy for these plaintiffs does not outweigh federal interests in maritime uniformity.

In *Berg v. General Motors Corp.*, 87 Wn.2d 584, 591-96, 555 P.2d 818 (1976), this court adopted a minority view with respect to the meaning of "economic loss" and held that a purchaser of a defective engine for a fishing boat could recover from the manufacturer lost profits for the fishing season that resulted from the defective engine. The Legislature overruled Berg and adopted the analysis of the California Supreme Court in *Seely v. White Motor Co.*, 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965),[8] when it enacted the 1981 products liability act. Talmadge, *Product Liability Act of 1981: Ten Years Later*, 27 Gonz. L. Rev. 153, 168-69 (1991-1992). *See also Graybar*, 112 Wn.2d at 857-58. The preamble to the 1981 act states in part:

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[8]In *Seely v. White Motor Co.*, 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965), the court denied recovery to a plaintiff who had pleaded lost profits as the only damages under a negligence theory.

> It is the intent of the legislature to treat the consuming public, the product seller, the product manufacturer, and the product liability insurer in a balanced fashion in order to deal with [problems associated with rising premiums for product liability insurance].
>
> It is the intent of the legislature that the right of the consumer to recover for injuries sustained as a result of an unsafe product not be unduly impaired. It is further the intent of the legislature that retail businesses located primarily in the state of Washington be protected from the substantially increasing product liability insurance costs and unwarranted exposure to product liability litigation.

Laws of 1981, ch. 27, § 1. *See also Talmadge, Washington's Product Liability Act,* 5 U. Puget Sound L. Rev. 1 (1981). In reaching an appropriate "balance", the Legislature specifically excluded from the WPLA recovery for economic loss in tort, deterring such claims instead to the UCC. *See* RCW 7.72.010(6); RCW 7.72.020(2). In the tort reform act of 1986, the Legislature

again noted the social costs associated with liability insurance and stated "it is the intent of the legislature to reduce costs associated with the tort system, while assuring that adequate and appropriate compensation for *persons injured* through the fault of others is available." (Italics ours.) Laws of 1986, ch. 305, § 100. Washington does have an interest in preserving appropriate remedies for personal injury; the loss at issue in this case, however, is purely economic.

The *Graybar* court, however, found *East River's* approach to economic loss unsuited to what the Legislature intended under the WPLA. *Graybar,* 112 Wn.2d at 864. *See also Stuart v. Coldwell Banker Comm'l Group, Inc.,* 109 Wn.2d 406, 417-22, 745 P.2d 1284 (1987) (indicating support for risk of harm analysis). The *Graybar* court carefully analyzed the statute and concluded that the WPLA incorporates the "risk of harm" analysis. *Graybar,* 112 Wn.2d at 866. However, there is no indication by the Legislature or this court that Washington's interests in deterring the manufacture and dissemination of dangerous products outweigh

the need for a uniform maritime law of products liability. Indeed, the *Graybar* court acknowledged that the Supreme Court in *East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986) exercised its authority to determine the substantive admiralty law. *Graybar,* 112 Wn.2d at 861-62. As Bayliner argues, there is no support for a rule of exception for economic loss in maritime products liability cases based on Washington law.

The adherence to uniformity in maritime law is evident in recent federal case law. The Supreme Court in *Sisson v. Ruby,* 497 U.S. 358, 367, 111 L. Ed. 2d 292, 110 S. Ct. 2892 (1989) extended the analysis in *Foremost Ins. Co. v. Richardson*, 457 U.S. 668, 73 L. Ed. 2d 300, 102 S. Ct. 2654 (1982) beyond the rules of navigation to state that other rules of maritime liability should be uniform between commercial and noncommercial vessels: "The need for uniform rules of maritime conduct and liability is not limited to navigation, but extends at least to any other activities traditionally undertaken by vessels, commercial or noncommercial."

In *Texaco Ref & Mktg., Inc. v. Estate of Tran*, 808 S.W.2d 61 (Tex. Sup. Ct.), *cert. denied*, 116 L. Ed. 2d 245 (1991), the court determined whether survivors of a man who was killed in a maritime incident were entitled to damages for mental anguish and loss of society, which are not recoverable under general maritime law. The court applied the criteria of *Sisson v. Ruby, supra,* for maritime jurisdiction and held that "[where general maritime law is properly invoked ... a trial court's failure to award damages consistent with maritime law is clearly reversible error." *Texaco Ref & Mktg., Inc.*, 808 S.W.2d at 64.

The court emphasized that general maritime law preempts state causes of action and remedies, consistent with the "longstanding desire of Congress and the judiciary to achieve uniformity in the exercise of admiralty jurisdiction". *Texaco Ref & Mktg., Inc., supra* at 64 (citing *Foremost*, 457 U.S. at 676-77; *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223, 91 L. Ed. 2d 174, 106 S. Ct. 2485 (1986)); *accord, Wahlstrom v. Kawasaki Heavy Indus., Ltd.*, 4 F.3d 1084, 1087-88 (2d Cir. 1993) (federal

maritime law, whether or not it conflicts with state law, applies to an action for wrongful death in state territorial waters brought under the admiralty jurisdiction of the federal courts). Likewise, in *Anderson v. Whittaker Corp.*, 692 F. Supp. 764 (WD. Mich. 1988), *aff'd in part, revd in part on other grounds,* 894 F.2d 804 (6th Cir. 1990), a case involving the sinking of a private yacht, the court rejected the argument that state products liability law should apply:

> Plaintiffs have raised the argument that because they have access to a remedy under state products liability law, this in some way lessens the federal interest over the controversy. The analysis employed in *Foremost,* however, makes it clear that *the existence of a parallel state remedy is of no consequence.* If a sufficient federal interest exists to justify the exercise of maritime jurisdiction, the application of maritime law will follow as a matter of federal supremacy. See 457 U.S. at 674-75, 102 S.Ct. at 2658.

(Some italics ours.) Anderson, 692 F. Supp. at 768 n.2; *accord, Karshan v. Mattituck Inlet Marina & Shipyard Inc.*, 785 F. Supp. 363 (E.D.N.Y 1992); *Sisson v. Hatteras Yachts, supra.* In this case, sufficient federal interest exists to justify the exercise of maritime jurisdiction. Consequently, with admiralty jurisdiction comes the application of substantive admiralty law. *East River,* 476 U.S. at 864. *See Zukowsky v. Brown,* 79 Wn.2d 586, 590 n.1, 488 P.2d 269 (1971). There is no persuasive authority to compel a different result in this case.

In summary, federal maritime law preempts application of a conflicting state law where there is a judicially fashioned admiralty rule on point. *East River* is the maritime rule on economic loss. To the extent that *Washington Water Power Co. v. Graybar Elec. Co., supra,* is read to conflict with *East River,* the federal admiralty rule controls. *Graybar* is controlling as to land-based product liability claims. Even considering "interest analysis", there is no authority to indicate that Washington's interest in product liability law outweighs or displaces federal interests in uniform maritime

law. *See Anderson v. Whittaker Corp.*, 692 F. Supp. at 767 (there is strong federal interest in providing uniform standards for the design and manufacture of products that have the potential to affect traditional maritime activities).

CONCLUSION

The plaintiffs' claims arise under admiralty jurisdiction. We hold, therefore, that substantive admiralty law precludes recovery for economic loss. Plaintiffs' remedy, if any, for economic loss to the yachts may be pursued in warranty against the seller under the UCC (RCW 62A). We reverse the Court of Appeals and remand for further proceedings consistent with this opinion.

ANDERSEN, C.J., AND DOLLIVER, DURHAM, AND MADSEN, JJ., concur.

UTTER, J. (dissenting) - I dissent. The majority reasons that state law will control "'in the absence of a federal statute, a judicially fashioned admiralty rule, or a need for uniformity in admiralty practice.'" Majority, at 82 (quoting *Bohemia, Inc. v. Home Ins. Co.*, 725 P.2d 506, 510 (9th Cir. 1984)). There is no assertion that a federal statute is involved. Thus, the only

questions at issue in this case are whether a judicially fashioned admiralty rule conflicts with state law and whether application of state law will jeopardize uniformity in admiralty law in such a way as to void its applicability. Since the answer to both questions is no, I would hold that noncommercial plaintiffs in admiralty are not prevented under federal admiralty law from recovering under the Washington products liability act (WPLA) for the value of a product itself when a defect in the product endangers people and damages property other than the product itself.

The majority's holding proceeds first on the mistaken premise that federal and state law conflict. They do not. Both laws permit recovery in product liability for the value of a purchased product where the transaction is of a non- commercial nature and the product endangers people and damages property other than the product itself.

In Washington, the WPLA governs product liability claims. RCW 7.72. The WPLA imposes liability on manufacturers where a claimant's "harm" is proximately caused by a manufacturer.

RCW 7.72.030. "Harm" does not include direct or consequential "economic loss". RCW 7.72.010(6). By adopting a narrow definition of "economic loss", the court *in Washington Water Power Co. v. Graybar Elec. Co.,* 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) unanimously preserved the right of consumers to treat damage to a product itself as compensable "harm" under the WPLA if the damage does not constitute "economic loss" as determined by a "risk of harm" analysis. Risk of harm analysis looks to the nature of the defect, the type of risk, and the manner in which the injury arose. *Graybar,* 112 Wn.2d at 861. The majority concedes that state law might afford the Stantons and Henry recovery under the WPLA.

The majority asserts that despite the otherwise controlling effect *Graybar* would have on land-based actions, majority at 87, *Graybar* should not apply in cases involving federal admiralty jurisdiction. The majority's holding is premised on a misapprehension of the scope of *East River S.S. Corp. v. Transamerica Delaval Inc.,* 476 U.S. 858, 90 L. Ed. 2d 865, 106 S.

Ct. 2295 (1986). It improperly views the Court of Appeals decision as creating an "exception" to the *East River* rule. Majority, at 79. Under the guise of merely applying *East River's* holding, the majority in fact *expands East River.* By doing so it artificially creates a conflict between state and federal admiralty law where none exists.

The majority extends *East River* in two significant ways. First, it extends the *East River* doctrine to noncommercial relationships. The plain holding of *East River* is as follows: "a manufacturer in a *commercial relationship* has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself". (Italics mine.) *East River,* 476 U.S. at 871. The reasons for distinguishing between commercial and noncommercial relationships for liability purposes have been widely acknowledged. The *East River* Court itself reasoned "the *commercial user* stands to lose the value of the product, *risks the displeasure of its customers who find that the product does not meet their needs, or, as in this case, experiences increased costs in performing a service.*"

(Italics mine.) *East River,* 476 U.S. at 871.[9] The plaintiffs currently before the court are consumers who bought their yachts in noncommercial transactions for the demonstrated purpose of pleasure boating, not for transporting cargo or for otherwise performing commercial services.[10] Furthermore, Bayliner, the manufacturer of the yachts, is alleged to manufacture and design

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[9]*See also East River S.S. Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858,' 873, 90 L. Ed. 2d 865, 106 S. Ct. 2295 (1986) (citing *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960)); *Sherman v. Johnson & Towers Baltimore, Inc.*, 760 F. Supp. 499 (D. Md. 1990); W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Torts* § 101, at 708 (5th ed. 1984), at 98 (Supp. 1988); Bungert, *Compensating Harm to the Defective Product Itself - A Comparative Analysis of American and German Products Liability Law, 66* Tulane L. Rev. 1179, 1249-51 (1992); Jones, *Product Defects Causing Commercial Loss: The Ascendancy of Contract over Tort,* 44 U. Miami L. Rev. 731, 75456 (1989-1990).

[10]Although one of the purchasers was a corporate entity, there was no evidence the purchase was part of a commercial relationship. The touchstone of whether a transaction is "commercial" is not whether a purchaser is a corporate entity but rather whether the transaction involves commercial attributes, including relatively proportionate bargaining power. *See generally East River,* 476 U.S. at 872-73. Additionally, I disagree with the majority's implication that the presence of insurers is of consequence in bringing this case within the scope of *East River.* The insurers possessed neither bargaining power regarding the purchase of the yachts nor commercial use for the yachts.

such yachts for recreational use. Clerk's Papers, at 145. The holding of *East* River therefore does not apply to this case.

Various cases are cited by the majority to support its holding that *East River* should be extended to noncommercial cases. Majority, at 76-79. These decisions are not controlling, as they are holdings from other jurisdictions. Furthermore, at least one court has recognized that *East River* does not extend to noncommercial relationships. See *Sherman v. Johnson & Towers Baltimore, Inc.*, 760 F. Supp. 499 (D. Md. 1990) (concluding that because the plaintiffs and the defendant were not in a commercial relationship, the *East River* rule did not preclude a claim in tort).

The majority inappropriately extends *East River* in a second significant manner by extending *East River* to scenarios involving grave risk to people and damage to property other than the product itself. In *East River,* neither people nor other property was injured or even endangered. Indeed, the *East River* Court expressly noted "[i]n the traditional 'property damage' cases, the defective product damages other property. In this case, there was

no damage to 'other' property." *East River,* 476 U.S. at 867. *East River* therefore does not categorically prohibit recovery for damage to a product itself. The court neither formulated a principle nor expressed an opinion on the proper rule for cases involving injury or risk to people and property other than the product itself. Therefore, federal and state law do not conflict, and state law will control if it does not excessively jeopardize federal harmony.

Here the majority commits its second error, concluding that even if there were no conflict of laws, the federal interest in uniformity outweighs the state interest in permitting recovery where risk of harm analysis deems injury to a product itself to be noneconomic.

The need for uniformity requires a balancing of federal interests against state interests. However, "[t]he Constitution tolerates some disharmony in admiralty law ... states may supplement admiralty law, and states' supplementation of admiralty law necessarily creates some discord in that law". *Pacific Merchant Shipping Ass'n v. Aubry,* 918 F.2d 1409, 1424 (9th Cir. 1990).

Accordingly, the balancing test should be applied in order to determine whether the state law "*unduly disrupts* harmony in the federal admiralty system." *Pacific Merchant,* 918 F.2d at 1424.

Critical to this balancing test is an identification of some degree of uniformity in federal admiralty law against which state interests can be measured. However, the courts sitting in admiralty are themselves split regarding whether noncommercial plaintiffs may recover for the value of a product itself if people are not endangered and no property other than the product itself is damaged. Moreover, courts in admiralty are silent as to whether plaintiffs, whether noncommercial or commercial, can recover for the value of a product itself when people are endangered and property other than the product itself is damaged. In this context, it is inappropriate for the court to claim that recognition of the state remedy would disrupt federal uniformity.

In an attempt to identify a uniformity in federal law against which state interests must be unfavorably examined, the majority asserts that commercial and noncommercial vessels must be

treated uniformly under admiralty law. Majority, at 86. The law it cites for this proposition, however, does no more than hold that commercial and noncommercial ships must be treated identically for the purpose of determining whether a case is subject to admiralty jurisdiction. *See Sisson v. Ruby,* 497 U.S. 358, 111 L. Ed. 2d 292, 110 S. Ct. 2892 (1990); *Foremost Ins. Co. v. Richardson,* 457 U.S. 668, 73 L. Ed. 2d 300, 102 S. Ct. 2654 (1982). The rules governing jurisdiction are not the same as those governing the application of substantive law. *See Bell v. Hood,* 327 U.S. 678, 90 L. Ed. 939, 66 S. Ct. 773 (1946). To the extent *Sisson* and *Foremost* might encourage courts to treat commercial and noncommercial relationships identically for purposes of substantive law, such viewpoint is dicta and, as such, not controlling. The federal interest in uniformly denying recovery to noncommercial plaintiffs whose lives were endangered and who suffered damage to property other than the product itself is nonexistent, and the need to preserve an alleged uniformity in admiralty law is thus weak at best.

Juxtaposed against this silence in federal law is a clearly articulated state interest in favor of recognizing a possible WPLA claim in this context. As the Court of Appeals noted:

> Whatever federal interest in uniformity exists, it is outweighed by Washington's concern to ensure the personal safety of its citizens, to deter the manufacture and dissemination of dangerous products, and to exercise its authority over tortfeasors acting within its jurisdiction. The WPLA, whose very application is at issue in this case, itself attests to those interests.

Stanton v. Bayliner Marine Corp., 68 Wn. App. 125, 132, 844 P.2d 1019 (1992). Since state law does not interfere with the uniform application of admiralty law, I would agree with the Court of Appeals that our state's interests outweigh the interest in an alleged uniformity in federal admiralty law and that Washington law should apply.

There is no conflict between federal admiralty law and state law on the facts of these consolidated cases. Neither does the

need for a uniform federal admiralty law outweigh the state interest in recognizing a claim involving endangerment of human life and damage to property other than the product itself. The rule in *Washington Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 774 P.2d 1199, 779 P.2d 697 (1989) thus applies and the Court of Appeals should be affirmed. I would remand the case for a determination of whether the Stantons and Henry state a claim under the WPLA and the risk of harm approach adopted by *Graybar*. Because there is no need to consider whether commercial or noncommercial plaintiffs in admiralty are prevented by federal admiralty law from recovering under the WPLA where life and property were neither injured nor endangered, I do not reach those issues.

BRACHTENBACH, SMITH and JOHNSON, J.J., concur with UTTER, J.

FILED
MAR 10 1994

THE SUPREME COURT OF WASHINGTON

JAMES H. STANTON, ET AL., Respondents,	)	
v.	)	No. 60031-7
BAYLINER MARINE CORPORATION, Petitioner.	)	ORDER DENYING MOTION FOR RECONSIDERATION
ALBANY INSURANCE COMPANY, Respondent,	)	
v.	)	
BAYLINER MARINE CORPORATION, Petitioner.	)	

FOR RECONSIDERATION

The Court having decided that the respondents' motion for reconsideration be denied,

It is hereby ordered that the motion is denied.

Dated this 10th day of March 1994.

/S/
Chief Justice

123 Wn.2d 64

DATED
MAR 14 1994

THE SUPREME COURT OF WASHINGTON

JAMES H. STANTON, WINNIFRED STANTON, and their marital community, et al.,

Respondents,

v.

BAYLINER MARINE CORPORATION, a Delaware corporation,

Petitioner,

OLYMPIA SALES, INC., d/b/a Olympic Boat Centers, a Washington corporation,

Defendant.

ALBANY INSURANCE COMPANY, a Washington corporation,

Respondent,

v.

MANDATE

No. 60031-7

King County
No. 882213682

C/A No. 27275-6-I

BAYLINER MARINE CORPORATION, a Delaware corporation,

Petitioner,

OLYMPIC SALES, INC., d/b/a Olympia Boat Centers, a Washington corporation,

Defendant.

THE STATE OF WASHINGTON TO:

The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Supreme Court of the State of Washington filed on December 30, 1993, became the decision terminating review of this Court in the above entitled cause on March 10, 1994. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: Costs will be taxed by Supplemental Judgment.

Order Denying Motion for Reconsideration was entered herein on March 10, 1994. Copy attached.

(SEAL)

IN TESTIMONY WHEREOF, I have hereunto set may hand and affixed the seal of said Court at Olympia, this 14th day of March, 1994.

/S/
RONALD R. CARPENTER
Deputy Clerk of the Supreme Court,
State of Washington

cc: Mr. Joseph Fischnaller
Mr. Dexter Washburn
Mr. Newell Smith
Mr. Dennis Ostgard
Mr. Jerome Scowcroft
Court of Appeals, Div. I
Reporter of Decisions